

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Gische, J.P., Webber, Singh, Kennedy, JJ.

13967

ROBERT BUDWILOWITZ,
Plaintiff-Appellant,

Index No. 101292/16
Case No. 2020-00857

-against-

MARC NICHOLS ASSOCIATES, et al.,
Defendants-Respondents.

Robert Budwilowitz, appellant pro se.

Appeal from order, Supreme Court, New York County (Robert R. Reed, J.), entered October 11, 2019, which sua sponte dismissed the complaint for failure to comply with a prior order, unanimously dismissed, without costs.

The sua sponte order is not appealable as of right (*see* CPLR 5701[a][2]; *Sholes v Meagher*, 100 NY2d 333, 335 [2003]). Plaintiff's remedy was to move to vacate the order, and if that was denied, to appeal the denial of his motion to vacate (*id*; *see also Figiel v Met Food*, 48 AD3d 330 [1st Dept 2008]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: June 1, 2021



Susanna Molina Rojas
Clerk of the Court